



**ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**MISC. CIVIL CASE NO.8 OF 2014**

**COUNTY GOVERNMENT OF KILIFI.....1<sup>ST</sup> APPELLANT**

**COUNTRY SECRETARY OF KILIFI.....2<sup>ND</sup> APPELLANT**

**=VERSUS=**

**GLADYS KALAMA.....1<sup>ST</sup> RESPONDENT**

**PETER CHOME.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

**Introduction**

1. The Application before me is the one dated 14<sup>th</sup> April, 2014 by the Appellants . The Application is filed pursuant to the provisions of Order 42 Rule 6 of the Civil Procedure Rules and all other enabling provisions of the law seeking for the following orders;-
  - a. **That there be an order of stay of execution of the order and/or all the consequential orders issued in CMCC No.152 of 2013 and especially the orders of the court issued on 7<sup>th</sup> April, 2014 pending hearing and determination of an appeal against the said orders made herein on 7<sup>th</sup> April, 2014 on such terms as appears just and proper.**
  - b. **That the cost of this application be borne by the Respondent.**

**The Applicants' case:**

2. The Applicants' Town Administrator deponed that the Respondent was evicted from the Applicants' property (the suit premises) primarily because she has defaulted in payment of rent and that the 1<sup>st</sup> Respondent had illegally and unlawfully sublet the premises contrary to the agreement made between parties.
3. The Applicants further deponed that by consent dated 25<sup>th</sup> June, 2013 all the impounded goods were returned to the Respondent. Thus the order compelling the applicants whether by themselves, their agents and/or servants to return to the Respondent or deposit in court the Plaintiff's belongings was of no consequence.
4. The Applicants deponed that the trial magistrate erred in issuing a mandatory injunction against

- the Applicant to reinstate the Respondent to the suit premises and the eviction of the 2<sup>nd</sup> Respondent at an interlocutory stage leading to the determination of the entire suit at the interlocutory stage.
5. The Applicants deponed that as a result of the orders given by the lower court at the interlocutory stage, Amina Kutsuka, who is not a party to the suit, will be evicted from the suit premises; that the 2<sup>nd</sup> Respondent is a stranger to the Plaintiff herein and was not in occupation of the suit premises and that Amina Kutsuka was in lawful occupation and was duly allocated the suit premises.
  6. The Applicants further deponed that the eviction of Amina Kutsuka from the suit premises may occasion the Applicants substantial loss if Amina Kutsuka sues for wrongful termination of tenancy.
  7. The Applicants claimed that the trial magistrate gave the impugned orders *ex-parte* without giving the appellants a chance to respond to the Notice of Motion and that the Applicants have lodged an appeal against the said decision.
  8. The Applicants finally deponed that the magistrate departed from the well-grounded principles in granting mandatory injunction and took into account extraneous matters and that the Applicants are ready to offer security as the court may direct.

### **The 1<sup>st</sup> Respondent's case;**

9. The 1<sup>st</sup> Respondent deponed that the Applicant has introduced new facts that were not pleaded in their defence or reply to the Respondent's application dated 13<sup>th</sup> June, 2013; that the trial magistrate exercised her judicial discretion with a lot of caution and that there is nothing unlawful in granting orders of mandatory injunction at the interlocutory stage.
10. The 1<sup>st</sup> Respondent stated that the Applicants have not shown the substantial loss that they shall suffer considering the house shall still be available in case their appeal succeeds.

### **Submissions**

11. The Applicants' advocate filed his submissions and reiterated that the eviction of the 1<sup>st</sup> Respondent from the suit property was lawfully and that the tenant who had been evicted was not the 1<sup>st</sup> Respondent and that substantial loss shall be occasioned to the Applicants if the tenant currently in the premises is evicted.
12. The Applicants' counsel further submitted that the Magistrate erred in issuing an order in the form of a mandatory injunction without cautioning herself and that in any event Peter Chome is not a tenant in the said house. Counsel relied on the case of **Mucuna Vs Ripples Limited (1990-1994) 1 EA 388**.
13. The 1<sup>st</sup> Respondent's counsel did not file his submissions.

### **Analysis and findings**

14. The Applicants are seeking for an order of stay of execution of the Ruling of the lower court dated 7<sup>th</sup> April, 2014.
15. In the said Ruling, the learned Magistrate allowed the Respondent's Application by granting a mandatory injunction compelling the 1<sup>st</sup> and 2<sup>nd</sup> Appellants to reinstate the 1<sup>st</sup> Respondent and her family in the suit premises and evict one Peter Chome, the 2<sup>nd</sup> Respondent from the suit premises.
16. In the Ruling, the learned Magistrate granted the order principally on the basis that the 1<sup>st</sup> Respondent was never given a notice before she was evicted from the premises and that even after receiving the full rent from her, the Applicants went ahead and let the suit premises to someone else.
17. The Applicants have admitted that they actually evicted somebody that the 1<sup>st</sup> Respondent had sublet the house to after the 1<sup>st</sup> Respondent fell in rent arrears.
18. It is not for this court at this stage to state whether the Applicants have an arguable appeal or not. The Applicants however must satisfy the court that unless the orders of stay are granted, they are

- likely to suffer substantial loss and that the Application has been filed within reasonable. The Applicants are also supposed to give security for the due performance of the decree.
19. Although the Applicants have stated that the eviction of the current tenant in the premises is likely to lead to the said tenant suing them, they have not denied that indeed the said tenant took over the suit premises immediately they evicted the 1<sup>st</sup> Respondent or the person they claim the 1<sup>st</sup> Respondent had sublet the property. In my view, the person who is likely to suffer most is the 1<sup>st</sup> Respondent and her family, considering, according to her affidavit in the lower, her son or family was evicted without any notice and after clearing the rent arrears. In the circumstances, it is fair and just to allow the 1<sup>st</sup> Respondent to occupy the suit premises as per the order of the Magistrate pending the hearing of the appeal.
20. For the reasons I have given above, I dismiss the Application dated 11<sup>th</sup> April, 2014.

Dated and delivered in Malindi this 31<sup>st</sup> day of **July**, 2014.

**O. A. Angote**

**Judge**